

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

Crl.MC.No. 1312 of 2001()

CC.591/2000 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD

.....

PETITIONER:

B. RAMA NAIK, S/O. APPAYYA NAIK,
GANESH PRASAD LOCAL TRANSPORT
AND CONTRACTOR, K.R. COMPLEX,
MANGALORE.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:

1. THE CHIEF JUDICIAL MAGISTRATE,
KASARAGOD.
2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 20/11/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON CRL. M.P. NO. 1170/2001 IN CRL. M.C. NO. 1312/2001

DISMISSED

20.11.2006

SD/- K.R. UDAYABHANU, JUDGE.

/True Copy/

P.A to Judge.

K.R. UDAYABHANU, J

CRL. M.C. NO. 1312 OF 2001

Dated this the 20th day of November 2006

ORDER

The petitioner who is the accused in C.C. 591/2000 in the file of Judicial First Class Magistrate, Kasaragod on the basis of the complaint filed by Chief Judicial Magistrate, Kasaragod with respect to the offence under section 193 IPC preferred under section 340 Cr.P.C has sought for quashing the same on the ground that the formalities contemplated by section 340 has not been complied with. It is submitted that no preliminary enquiry was conducted as contemplated under section 340 Cr.P.C before filing the complaint. It is further submitted that such enquiry is mandatory and a finding should have been entered into. It is pointed out that the only witness cited is the bench clerk of Chief Judicial Magistrate Court alone. The ingredients of the offence under section 193 has not been made out. No purpose will be served by further proceeding with the matter. The petitioner/accused was PW8 in C.C. 154/1997 with respect to the

offences under section 279 and 304 A IPC. The allegation is that the petitioner who is the owner of the vehicle denied only knowledge as to the identity of the person who drove the vehicle at the time. According to the petitioner, it was while the vehicle transporting beedi from Kasaragod to Ullal that the accident took place. The petitioner was residing at Mangalore. It was the beedi contractor who had arranged a driver and took the vehicle from Badiadak to Ullal. The petitioner was not having direct knowledge as to the person who drove the vehicle.

2. The Government Pleader was also heard.

3. I find that the matter is coming up before this court for the second time. Earlier the court below itself took cognizance of the matter and the same was struck down by order of this court in Crl. M.C. No. 2873/2000 with liberty to Chief Judicial Magistrate to prefer the complaint afresh. It is, thereafter, the present complaint has been filed before the Judicial First Class Magistrate.

4. The counsel for the petitioner has relied on the decision of this court in **Subramanian v. M.A.C.T. Irinjalakuda** (1998 (2) KLT 43) and **Kuriakose v. State of Kerala** (1995 (1) KLT 76) which pointed out that there should be prima facie objective evidence as to the fact that the accused has tendered false evidence. It is seen from the complaint submitted by the court below that no preliminary enquiry was conducted. Ofcourse, section 340 Cr. P.C does not insist for the preliminary enquiry invariably in all cases. All the same the court that is preferring the complaint should form an objective opinion as to the alleged offence and the order should be a reasoned one. In the instant cases I find that the court has only mentioned that PW8/petitioner who is the owner of the vehicle has stated that he is not aware of the person who drove the vehicle at the particular time and that he was declared hostile. Nothing more is evident from the order of the court below. It is also pointed out that the occurrence witnesses have denied that they saw the driver or they denied the accused as the driver. The court is of the opinion that petitioner/accused being the owner would have been aware of the person who drove the vehicle at the time. The above

inference is hardly sufficient to comply with the stipulation under section 340 Cr.P.C. There is nothing mentioned in the complaint in support of the finding that he uttered false evidence before the court.

In the circumstances, I find that no purpose will be served by further proceeding with the matter as the complaint did not fulfil the requirements under section 340 Cr.P.C. In the result the proceedings pending as C.C. 591/2000 in the file of Judicial First Class Magistrate is herewith quashed. The Crl. M.C. is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

